

FUNERAL MARKET INVESTIGATION

WORKING PAPER ON LOCAL AUTHORITY TENDERING PROPOSAL

CO-OP RESPONSE

Introduction and Executive Summary

1. While the CMA has withdrawn its deadline for submission of comments on its latest batch of working papers, it has asked Co-op if it is in a position to provide comments. We have previously shared that we are willing to do this, however, the comments are being finalised by the Legal team without significant involvement by our Funeralcare business colleagues, who are currently focussed on adapting to the significantly changing environment resulting from the coronavirus pandemic and ensuring we continue to support families at this very difficult time. We, therefore, may have additional comments we want to add at a later date.
2. This document sets out Co-op's submissions (on the basis set out above) in response to the CMA's Working Paper on Local Authority Tendering Remedy Proposal (**Paper**). This response was largely drafted prior to the COVID-19 pandemic and does not therefore fully take account of its implications for our customers, our business and the sector as a whole.
3. However, our early experience shows that in the short term, the impact of the outbreak includes:
 - a) operational disruption;
 - b) a change in the way customers interact with the business (we are seeing a significant shift from face-to-face contact) to use of telephone and online;
 - c) significant increased costs, in particular as a result of needing to both pay colleagues who are self-isolating or sick as well as colleagues to perform the tasks those out of the business would have performed, but also other costs such as to add mortuary capacity in key urban areas and to supply sufficient PPE equipment to protect our staff;
 - d) a shift in the mix of funerals towards slimmed-down propositions or options without ceremony due to the need to comply with the Government's social distancing guidance. This is significantly impacting on the financial performance of the business and we are needing to adapt our offering so we can support families to say goodbye to their loved ones in the best way they can. We have shared with you the proposition changes we made on 3 April and we continue to monitor the situation and will adapt as appropriate;
 - e) deaths being brought forward (resulting in a decreasing number of funerals after the outbreak);
 - f) the significant emotional and psychological impact on funeral directors who are giving dignity to the deceased and supporting loved ones whilst having to explain the restrictions imposed by the emergency rules. Furthermore, all our colleagues are dealing with the worry of the personal risk they are taking by being away from their homes and the consequent increase in risk which their families will be exposed to; and

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- g) without increased government support¹ losses being incurred by funeral providers as the mix changes. This is likely to impact on the financial viability of funeral providers if the situation continues for some months.
4. While some of these impacts may be temporary, we believe that others will speed up or lead to permanent changes we were already seeing in the market as funeral directors exit the market and consumers become more familiar with unattended funerals.
 5. We have been very clear in our earlier submissions that we believe the funerals market was and is changing and we believe the CMA should recognise this change which will only increase with the impact of the COVID-19 outbreak. We believe that the CMA's proposed remedies on pricing and LA tendering are not appropriate or proportionate and believe the CMA should reconsider its proposals in this area. If these were imposed after a sustained and difficult period for the industry in stepping up to respond to the COVID 19 pandemic then it would be likely to have a very significant adverse impact on what will be an already fragile industry with serious consumer detriment.
 6. We will keep the CMA updated on our experiences and the impact on our business. [REDACTED].
 7. The CMA's proposals are highly likely to have unpredictable distortive effects on both the funeral and crematoria markets and produce poor outcomes for customers, who will find themselves directed to choices that are not well suited to their preferences.
 8. The CMA has acknowledged² but has completely underestimated these risks. The proposed remedy is intrusive, which is not proportionate to any adverse effects on competition that the CMA might identify. The CMA's duty is to implement a remedy that is effective in achieving its legitimate aim, is no more onerous than needed to achieve its aim, is the least onerous if there is a choice between several effective measures, and does not produce disadvantages which are disproportionate to the aim.³ This remedy clearly fails this test, given the limited evidence to support an AEC and the available comprehensive package of alternatives that the CMA has already proposed and is available to it.
 9. As the CMA has noted, the remedies consulted on in the Paper are likely to be part of a package of broader remedies that must work as a whole. However, it has not engaged seriously in considering the interactions between the wide range of remedies it has proposed:
 - a) The proportionality and effectiveness of any remedies need to be considered in the round. In the context of a sector where consumers confirm, time and again, that they are very satisfied with the service they receive, where there is a range of market participants, sustained entry and where prices and profitability are dropping substantially, additional, more onerous remedies, including price regulation, would be disproportionate. The CMA's proposed approach, driving to increased standardisation, will materially harm customer choice in a market where customers clearly value bespoke, personal service and options.

¹ Current Government packages available do not materially help the sector. [REDACTED].

² Paragraph 32 of the Paper.

³ See paragraph 344, CC3 (Revised) Guidelines for market investigations: Their role, procedures, assessment and remedies <https://www.gov.uk/government/publications/market-investigations-guidelines>

- b) The CMA has, in a number of places, indicated that a Local Authority tendering remedy might operate as an alternative or a complement to a price control remedy.⁴ We believe that any concerns can be addressed by an appropriate combination of sales practice, transparency and quality regulation remedies, which in themselves represent significant changes to current practices and are entirely capable of informing and influencing customer expectations of typical funeral prices. There is no case for implementing both a price control and Local Authority tendering in any circumstance and we believe that neither is justified on its own.
- c) Existing Local Authority tendering is nascent and the implications for both funeral and crematoria markets, if schemes become widely adopted, are untested, with significant potential for unintended consequences. While it may appear as though Local Authorities moving into funeral directing would increase competition, Local Authorities that have chosen to tender funeral contracts are not disinterested in their decision to do so: the vertical relationship with the Local Authority crematoria may lead to a distorted tendering process if the Local Authority is also operating as a funeral director. Frequently a resident's funeral is sold as a package that includes Local Authority crematoria services (which are not discounted), or which is tied to Local Authority services. The funeral scheme therefore drives revenue for the Local Authority and also, in securing a discount for funeral services and bundling it with cremation, deflects pressure on the cost of the crematoria services which the Local Authority provides. These concerns are substantially amplified when considered alongside other remedies such as capping of crematoria fees. For example, if Local Authority income from crematoria comes under pressure, they may consider entry into funerals markets and act as direct competitors in tendering processes.⁵ Alternatively, if crematoria fees continue uncapped, there will continue to be strong incentives to deflect criticism and drive funeral prices below sustainable levels. As demonstrated in the COVID-19 pandemic, Local Authorities also have a role in coordinating services in their local area in certain circumstances. Their credibility and ability to perform that role would be undermined if they have a greater role in brokering and promoting funeral services.
- d) There are also a number of legal considerations that need to be worked through in planning for the implementation of a remedy of this kind. We do not believe that the CMA has the power to impose an Order on Local Authorities or that Local Authorities can be obliged to comply with it (or to meet the additional costs of compliance with the Order). Arrangements are certainly different across the devolved nations of the UK, creating significant potential for inconsistency and confusion. Similarly, it seems to us that there would be material differences between Local Authorities whose tendering of such funerals falls within the public procurement rules and those which do not.
10. The CMA's decision to publish extensive remedies working papers before setting out its conclusions on any adverse effect on competition it believes may exist and in a staged way, has not permitted us to fully consider the CMA's proposals in the round. It has made it challenging to comment on the workability of the CMA's potential package of remedies, its effectiveness in addressing potential concerns and its proportionality. Consequently, whilst we

⁴ See for example paragraphs 4(b) and 25 of the Paper, which suggests that Local Authority arrangements might operate as a cross check, or benchmark for funeral pricing, but also paragraph 10 of the Paper, which describes this as a 'more market orientated approach' than 'regulating outcomes directly'. Paragraph 33 of the working paper on options for price regulation of funeral director services at the point of need also proposes that these might be 'alternative and/or complementary remedies' and that 'this remedy could provide similar benefits to....a price control remedy'.

⁵ Following the example of Gateshead Council who launched its own funeral director business in 2018 <https://www.gateshead.gov.uk/article/8745/Gateshead-Council-launches-its-own-funeral-directors-service>

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have sought to provide comments where possible, Co-op reserves the right to make further comments as and when we better understand the CMA's evidence base and conclusions arising from it as well as the extent of the overall remedies package proposed and the interrelationships between the various remedies under consideration. We would also refer you to our comments in paragraphs 8 and 9 above.

11. If the CMA does not agree with our view that pricing and tendering remedies are not appropriate then they should consider a staged approach to the introduction of remedies. Our view is that the evidence does not support a finding of an adverse effect on competition to which mandatory Local Authority tendering or price regulation of any form are a proportionate remedy. Before resorting to such a remedy, it would be more proportionate for the CMA to first implement transparency and sales practice remedies and only then allow a relevant regulatory body to reassess whether mandatory tendering or a price control mechanism is needed. This would avoid the intrusive step of driving families to options they do not choose where there is demand for a personal and bespoke service. This approach would also be more manageable for customers, who might otherwise find new practices and change confusing, and it would be more proportionate for a sector comprising many small providers facing substantial change to manage not just as a result of CMA proposed remedies, but also recovering from the implications of the COVID 19 pandemic in the UK.
12. Our view is that, in large part, the CMA's analysis is a backward looking snapshot at a point where the sector is undergoing significant change. Historical evidence is not representative of the way this market functions today and certainly cannot provide any indication on its future direction. Evidence that we have submitted shows a sharp decline in Co-op's profitability⁶ together with the stagnation and decline of Dignity's profitability over the same period⁷ (which shows a sharp drop-in Dignity's 2019 preliminary results⁸). With the change in mix being felt as a result of coronavirus there will only be significant adverse impacts on profitability. [X].⁹ Our view is that, if reinforced by proportionate remedies, these market changes are likely to be sustained, such that more intrusive remedies, with all the risks of unintended consequences they entail, will prove to be unnecessary.
13. Overall, CMA working papers setting out its evidence base so far (consumer survey, firm-level analysis, take-up of simple, price dispersion analysis, profitability analysis) show a disconcerting picture emerging. On the one hand, the evidence strongly indicates that intrusive remedies, such as price controls or local authority tendering, would be wholly disproportionate to the current and expected future level of competition in this market. On the other, despite the level of robustness and overall quality of the CMA's analysis being poor, the CMA appears minded to draw misguided conclusions on the extent of consumer detriment in this market, by directly attributing any gaps, distortions and ambiguities in the analysis towards consumer harm. As the CMA is still consulting on a wide range of remedies, some of which are extremely intrusive, we are seriously concerned that the CMA is on course to greatly overstate the magnitude of the AEC (if any) in this market, and that it risks applying damaging and disproportionate remedies as a result.

⁶ See Figure 4, paragraph 4.2 of our response to the Profitability Working Paper

⁷ See Figure 3, paragraph 4.2 of our response to the Profitability Working Paper

⁸ see <https://www.dignityplc.co.uk/investors/results-and-reports/shareholders/>

⁹ Please see paragraphs 2.6-2.12 of the Response to the Working Paper on Funeral Directors Pricing Levels and Trends

14. Our responses to the specific questions set out in paragraph 49 of the Paper are set out in the Schedule to this response.

Detailed Response

There is no evidence to support an intrusive tendering requirement

15. At paragraph 9 of the Paper, the CMA states that the rationale for including such a remedy would be as a response to any AEC finding '*weak consumer engagement on the demand side, due to factors such as emotional distress and time pressure*'. As yet, the CMA has not presented such evidence. The consumer surveys conducted by the CMA and on behalf of Co-op do not support a finding of weak consumer engagement.
16. Indeed, the CMA's findings indicate that nine in ten consumers considered that their expectations of the services provided by the funeral director had been met in full or had exceeded their expectations. Eight out of ten consumers indicated they had recommended or would recommend the funeral director they used to someone else. This suggests that consumers are satisfied with the service, both in terms of quality and prices and that there is none of the buyers' remorse that you might expect from a decision made with insufficient engagement at the time. The results also indicate that the prices are sufficiently transparent. Further, consumers are aware of the possibility of switching, and there are no barriers to switching.
17. Notably, the survey results demonstrate that the majority of consumers have good knowledge of prices. Nearly eight in ten consumers said that the full cost of the funeral was either less or about equal to what they had expected. The survey results show that this percentage does not increase for consumers who had compared funeral directors ahead of choosing a funeral director.¹⁰
18. Equally the evidence does not show weak engagement that prevents customers from gathering information that they need to make decisions. The results show that nearly nine out of ten consumers considered they had received the right information about costs and/or options and the same proportion was said to have received this information at the right time. Equally, the Ipsos MORI mystery shopping report shows that total price information is sufficiently transparent when consumers make enquiries over the phone.
19. Low cost and good value options already exist in the market and will be found by customers, supported by a proportionate level of transparency. There is therefore no case to mandate a one-size-fits-all Local Authority option that customers are directed to.

The objectives pursued by a Local Authority remedy are unclear and risk distorting markets

20. Paragraph 11 of the Paper raises a very basic question of what the purpose of a Local Authority tendering remedy would be: to alleviate funeral poverty, or to enable competitive outcomes that serve customers well? These are not the same, and conflating or confusing the two would risk poor outcomes that distort markets and do not ultimately serve customers well. Markets that work well and promote competition will go some way to alleviating funeral poverty in providing funerals that meet consumer needs and deliver good value. However, focusing on reduction of

¹⁰ See Co-op's response to the CMA's research papers, submitted on 3 March 2020.

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cost at the expense of other factors risks distorting markets and reducing choices and quality, which, in our view, customers clearly care about.¹¹

21. Worryingly, the Paper seems to accept the premise that a funeral service can be standardised and choices constrained, and that this is an acceptable trade off.¹² We strongly disagree with this for the following reasons:
- a) Co-op's experience has been that the funerals market is developing rapidly with customer needs changing and an increasing expectation of personalisation of funerals. There is no one-size-fits-all solution for a funeral. The impact of coronavirus is accelerating these changes. The CMA's research findings that the funeral director's ability to meet bespoke requirements is one of the most important aspects in a customer's choice of funeral director also underlines this.¹³ [X].
 - b) A 2017 YouGov report shows that a significant number of funerals featured extras, which were explicitly requested by clients.¹⁴ The figures reported aggregate all funerals, but there is additional variation across religious, humanist and environmentally friendly funerals. The demand for personalisation is demonstrated by the fact that one in seven funerals organised in 2017 included a 'special request' (e.g. sport team kit, wearing bright colours, alternative transport, turning ashes into a diamond etc.)¹⁵
 - c) Evidence of personalisation can also be seen in the large amount of variation it takes a funeral director to arrange and conduct a funeral. [X]. This evidence also points to the uniqueness of every funeral, with wide variations in the needs of the loved ones and deceased, and the subsequent cost to the funeral director in providing quality service to deliver what each customer wants.
 - d) Funerals are diverse, and will become more so, to meet demographic, ethnic and religious/secular changes in the UK.¹⁶ Current practices vary enormously by geography, demonstrated for example in local and cultural preferences for the use of embalming (because of a preference for viewing), for limousines, corteges etc. In paragraph 48 (a) of the Paper, the CMA acknowledges that local factors may have influenced, and may continue to influence, the coverage of Local Authority schemes.
22. Customers are asking for more personalisation, and setting a 'standard' benchmark funeral package, whether that is nationally, or with the expectation that it should be taken up by most in a local area, would limit the ability of funeral directors to provide customers with the service they want. Responding to changing customer preferences will require flexibility on the part of

¹¹ See, for example, paragraph 16 of the CMA's working paper on the Quality of 'Back of House' Services, which identified personal experience and recommendations as the most important factors in customers' choice of funeral director and paragraphs 20 onwards of the same paper, which discuss how these may be taken by customers to be indicators of quality.

¹² See for example paragraph 32(a) of the Paper in relation to the suggestion that a uniform approach to the specification of a tendered funeral might be taken across the UK.

¹³ CMA (2020), 'Consumer survey results', tables 5, 6, 20

¹⁴ YouGov (2017), 'Funeral planning 2017', pp. 31, 40.

¹⁵ SunLife (2017), 'Cost of dying report 2017', p. 16.

¹⁶ See response to the RFI dated 10 May 2019 (under submission dated 17 June 2019 (A2.12) and submission dated 21 June 2019 (B2.2)).

funeral directors and this flexibility would be reduced if funeral directors had to offer a 'benchmark' package with limited ability to amend the service. The current COVID-19 pandemic illustrates how essential that flexibility is. As we explained in our letter of 3 April 2020, Co-op has already had to adapt and change the funeral packages that it offers to customers and have created a new direct cremation offer that allows more options and personalisation within the constraints of the current circumstances.

23. Funerals and associated celebrations of life are the opportunity for people to say their last goodbye to loved ones. We feel strongly that we should adapt so that families can say goodbye to their loved ones in the way they wish to do, being clear and transparent on the options available and the associated price. We do not believe it is for the CMA, or others, to dictate to customers or curtail their choices; a focus on a tendering process to deliver a 'standard funeral' will do this. Price will be a factor in the decision making, but not the only one, bearing in mind the personal, emotional nature of the service being provided. All our standard funeral packages ('Cremation without Ceremony', 'Simple', 'Standard' and 'Traditional') permit families to vary and personalise the services provided in order to accommodate their wishes and needs.
24. Further, even within a fixed specification, there is a real risk of hollowing out of the service delivered. At paragraph 10 of the Paper, the CMA emphasises the prospects of Local Authority tendering to reduce prices to consumers, potentially as a result of efficiencies from higher volumes. Should such tenders become prevalent, the importance of non-price elements in any tender must not be lost in order to achieve the lowest headline price. As we have submitted to the CMA in relation to coroner's contracts, tendering, together with a belief amongst some funeral directors that taking the deceased into care helps secure the eventual funeral, has driven these to be delivered at below cost¹⁷ which is not sustainable in the long term. Similarly, tendering of public health contracts has become ineffective, as an acceptable specification cannot be provided at the price Local Authorities are willing to pay and the service available to families is very limited as a result. Research by Royal London published in January 2020¹⁸ highlights the difference in specification between Local Authorities for public health funerals, as these have been hollowed out in pursuit of lower prices. Royal London found that 21 Local Authorities do not return ashes to families after a public health funeral, 18 Local Authorities charge families for ashes to be returned after a public health funeral and 14 Local Authorities do not allow families to attend a public health funeral.¹⁹
25. [REDACTED].
26. As a result, funeral directors will either provide a poor service, seek to recover those costs elsewhere (for example in delivery of a funeral secured as the CMA has found some do), or to cease engaging in those tenders [REDACTED].
27. In addition, the tendering remedy could have significant consequences for the funeral plan providers. On average, there is a gap of approximately [REDACTED] years between the point at which a funeral plan is purchased and the time when the funeral takes place. There are currently

¹⁷ See the evidence the CMA has identified at paragraph 109 of its working paper on the Role of Intermediaries, including evidence of 3 contracts tendered for at £0 and won.

¹⁸ Public health funerals in the UK: Time to end the postcode lottery <https://www.royallondon.com/siteassets/site-docs/media-centre/research/public-health-funerals-royal-london-report.pdf>

¹⁹ Page 7, Public health funerals in the UK: Time to end the postcode lottery <https://www.royallondon.com/siteassets/site-docs/media-centre/research/public-health-funerals-royal-london-report.pdf>

approximately 1,492,000 unredeemed plans in place in the UK²⁰. If tendering results in the appearance of prices, endorsed by a Local Authority, that are materially below the price that was paid for a plan, [X]. It would also reduce the uptake of funeral plans going forward. Customers are likely to be disincentivised from buying funeral plans, at a point where they are able to make a more considered purchase (losing all the attendant benefits such as choice, peace of mind, financial burden on families) if a Local Authority 'at need' funeral is, or appears to be, significantly cheaper. If these remedies are adopted, we may expect Local Authorities to offer their own pre-paid plans;²¹ however, following consultation HM Treasury have concluded, that Local Authorities should be exempt from the new regulations on the sale of pre-paid plans.²² We believe that this will create a very significant risk to customers. Our position is as set out in the response to HM Treasury namely: *'we believe that it is important that anybody who provides funeral plans or equivalent products such as pre-paid cremation plans should be subject to the same regulatory scrutiny and requirements. We are therefore not supportive of an exclusion for Local Authorities'*. If Local Authorities are to play a critical role as a gateway for provision of funeral services, whether for at-need or pre-need, it is even more critical that the right safeguards apply.

28. The effect of any Local Authority tendering remedy would greatly distort the market since Local Authorities would be completely unregulated, but would be competing against regulated providers carrying a significantly higher cost of doing business. A tendering remedy would greatly incentivise Local Authorities to enter this market where they can materially undercut established and experienced funeral plan providers. Any upsides to the consumer from regulation would be lost since their investments [X] would be in the hands of unregulated, inexperienced Local Authorities, not to mention the resulting customer confusion between a newly regulated product and a cheaper unregulated product on offer from Local Authorities.

Existing Local Authority schemes are limited in scope and must be treated with caution as a template for a remedy

29. Of the approximately 350 UK Local Authorities in the UK, so far as we are aware, fewer than 20 currently have a residents' scheme in place. Up until approximately a year ago, there were fewer than 10. Such schemes are therefore nascent and their potential implications for both funeral and crematoria markets, if scaled up, are untested. The CMA cites Local Authority statements that the existing tendered packages have lower prices, but it is unclear whether in at least some cases, the lower prices are because the tendered funerals contain fewer elements than other funerals or these elements are delivered to a different quality. For example, the East Ayrshire Local Authority reportedly states that 'Our partners are offering a tailored funeral package with savings of approximately 29% to 61% of the Scottish average cost for funeral director services of £2839'.²³ It is also unclear how the Local Authorities calculated the supposed savings, e.g. was the Local Authority reliant on information provided by funeral directors in the tendering process? Last, it is unclear if the CMA has verified these calculations.
30. Local Authorities that have chosen to tender funeral contracts are not disinterested in their decision to do so. Most of the examples set out in Appendix A tie Local Authority residents' funerals to Local Authority-owned crematoria (in a market where Local Authorities own and

²⁰ According to most recent figures from the Funeral Planning Association who represent circa 95% of the market.

²¹ In paragraph 2.8 of the Regulation of pre-paid funeral plans: response to the consultation March 2020, HM Treasury states that 'local authorities have become increasingly active in the funeral plan market'

²² See paragraph 2.89 of the Regulation of pre-paid funeral plans: response to the consultation March 2020

²³ Appendix A: \examples of Local Authority low cost funeral schemes.

operate around two thirds of crematoria in the UK)²⁴. The CAGR for burial and cremation at 6+% and 5+% respectively²⁵ has outstripped increases in funeral director fees, with the profitability of Local Authority crematoria in some cases substantially ahead of that for private crematoria.²⁶ However, as the CMA has noted at paragraph 17, whilst Local Authorities seek discounts from funeral directors for the provision of such schemes, they do not offer discounts to standard prices for their crematoria or cemetery facilities included within such packages. As the CMA has found, those crematoria fees have continued to rise²⁷ with price increases outstripping any rises in funeral director fees. In at least some cases, residents' funerals appear to be a mechanism to drive traffic to Local Authority facilities without compromising the prices charged for those services, with the customer discounts borne by the successful funeral director(s). This would distort competition in the crematoria market towards Local Authority facilities and represents a clear conflict of interest for Local Authorities in how they manage such tenders. However, without the incentives of commercial benefit for the Local Authority (which might well be eliminated or partially addressed through price regulation of crematoria prices) the incentives for Local Authorities to invest in tendering and promotion of such schemes is unclear.

31. In successful resident schemes, certain funeral homes can become dependent on volumes secured via the scheme. For example, in areas where Co-op is provider for such schemes, funeral homes may have up to [X]% of their volumes accounted for by residents' funerals. That level of volatility, replicated across many Local Authorities is likely to have serious implications for funeral directors in the event they are unsuccessful in a tender, and we would expect that it would drive market exit. Ultimately, over time, some areas may find that there are only a small number of surviving local funeral directors with the coverage and capability to tender for certain contracts. Similarly, this could also reduce market entry, with fewer firms willing to enter the funeral director market. A 'winner takes all' auction process may well lead to exit and reduced entry. Section 3.1 of the 2005 Competition Commission/Paul Klemperer paper on Bidding Markets²⁸ states:

'...especially when contracts are large and specialized, the winner of the current contract will often have a substantial advantage at the re-contracting stage, and new entry is likely to be hard and unattractive'.

'For example, after being the winner among eight bidders of the contest for the seven-year monopoly franchise to run the UK National Lottery when it was founded in 1994, Camelot had developed substantial learning-by-doing and reputation advantages by the time of the subsequent contest in 2000. Not surprisingly there was far less competition (just two bids) in the second contest. Footnote: 'Arguably the surprise was that there was a second bidder at all'

Consequently, the CMA's views, as suggested at paragraph 28, that schemes need to provide a minimum guaranteed volume come with material risks for the overall competitive structure of the market and real questions over whether it would be an effective means to deliver the affordable pricing that the CMA hopes to achieve over the medium term. Our view is that if a

²⁴ See paragraphs 14-15 of the CMA's Working Paper on Crematoria: Background and Market Structure

²⁵ See tables 9 and 10 compared with table 7 in CMA's working paper on Funeral Director pricing levels and trends.

²⁶ See CMA's working paper, Crematoria: Profitability Analysis

²⁷ See paragraph 15 and Figure 1 of the Crematoria: Background and Market Structure Working Paper

²⁸ <https://www.nuffield.ox.ac.uk/users/klemperer/BiddingMarkets.pdf>

tendering remedy (which we do not support) is progressed then, of the two options set out at paragraph 29, it should be on the basis that multiple providers are appointed, in order to avoid risks to the integrity of local competition in each area.

The CMA's approach to the interaction of a Local Authority tendering remedy with other remedies is incoherent and inconsistent

32. The CMA has, in a number of places, indicated that a Local Authority tendering remedy might operate as an alternative or a complement to a price control remedy, variously suggesting that it could:
- (a) provide data points to feed into or cross check a 'competitive' benchmark for funeral pricing, which could be applied on a wider basis, within or alongside a price control remedy (paragraphs 4(b), 47);
 - (b) supplement a safeguard price control by encouraging competition in prices 'below the cap' (paragraph 25);
 - (c) introduce competition 'for the market' and so enable local cost and demand to be reflected in market outcomes, rather than regulating outcomes directly and so potentially avoid the need for regulated pricing (paragraph 10);
 - (d) serve as a default funeral arrangement for customers in prescribed circumstances (paragraph 30); and
 - (e) create visibility of prices that can be a comparison point and might prompt lower prices from non-appointed providers (if there is sufficient consumer engagement) (paragraph 24).
33. The CMA is therefore unclear as to whether this remedy is (i) an extension of transparency (providing an option and information on what a low cost funeral could be and which customers might respond); (ii) a mechanism to generate market driven outcomes (where Local Authorities stand in the shoes of customers and avoid the need for a regulated price); or (iii) a foundational element of a regulated price.
34. To the extent that market driven outcomes can be generated from a Local Authority tendering remedy, it seems obviously disproportionate and unnecessary to combine it with a price cap remedy. If good market outcomes can be driven from a competitive process, it would be wrong to pursue a more distortive remedy in addition to requiring or promoting such tender processes.
35. It is apparent that the CMA has not fully considered how a price remedy would interact with the proposed Local Authority tendering remedy and it is entirely unclear how national pricing would interact with the CMA's local authority tendering proposal, which would inherently produce local pricing for each area. For example, funeral directors might be less willing to offer lower prices to Local Authorities if that price was used to set the price cap for the rest of the market. A tender price based on securing volume, as suggested at paragraph 28 of the Paper, cannot be a relevant benchmark for pricing overall, as suggested at paragraph 47, of the Paper where it does not come with the assurance of volumes. Put simply, a funeral director cannot offer preferential prices to all customers without either losing money and going out of business or reducing quality to unacceptable levels. Further, a local authority tendering remedy would likely reduce volume for funeral directors which were not selected by the tendering process; therefore increasing the amount of fixed costs that would have to be recovered from each funeral.

Mandating funeral tendering as a default option in certain circumstances, as proposed in paragraph 30 of the Paper, is highly flawed, given the high touch, bespoke and personalised nature of a funeral. Not only is it highly interventionist, as the CMA acknowledges, and therefore disproportionate, it is highly likely to result in services being delivered which do not meet the needs and preferences of customers. This is not simply a question of meeting specific cultural or religious requirements, but recognising that customers have only one opportunity to arrange an appropriate farewell for their loved one and there is a balance to strike between ensuring that they are fully aware of the options available to them, as opposed to directing them towards a funeral scheme that they may, on reflection, regret. The risk is substantial, given that this remedy would likely impact more than half of all funerals: since a coroner is currently involved in 46% of deaths, before deaths in Local Authority operated care homes are taken into account.

Mechanisms to impose a mandatory tendering remedy raise significant questions about their interaction with Local Authority duties and powers

36. The CMA has raised a number of potential mechanisms to implement a Local Authority tendering remedy, including:
- a) recommending that Local Authorities implement procurement schemes for local residents;
 - b) recommending that central government place a statutory duty on Local Authorities to provide tendered schemes; or
 - c) mandating that Local Authorities do so by means of a CMA Order.

37. As set out below, the CMA does not have power to impose an Order of the kind it proposes and it would be wrong to attempt it.

The CMA does not have power to impose an Order to mandate procurement of funeral schemes by Local Authorities

38. Leaving aside provisions which are merely 'supplementary, consequential or incidental', a CMA Order may only contain provisions of a kind permitted by Schedule 8 of the Enterprise Act 2002 (**Schedule 8**). The Paper does not identify any paragraph in Schedule 8 which would, in the CMA's view, authorise a requirement upon Local Authorities to adopt and implement what the Paper calls 'procurement schemes for local residents'. We do not believe that any such authority is in fact to be found in Schedule 8.
39. The majority of the substantive provisions in paragraphs 2 to 19 of Schedule 8 would do nothing to justify any such requirement. Nonetheless, they are relevant as indicating the general scheme and intent of Schedule 8 in the various contexts to which it may apply and it is apparent that they are concerned with regulating the conduct of those who are concerned with the merger situation or market activity in question.
40. The only conceivable candidate, so far as we can see, for authorising an Order of the kind contemplated by the Paper, would be paragraph 10 of Schedule 8; however:
- a) Local Authorities are not suppliers of, or customers for, the relevant services here; and
 - b) the intervention of a Local Authority is not needed to facilitate the provision of funeral services, either generally or to a particular standard or in a particular manner. There is no suggestion either that customers find it difficult to obtain funeral services (or services

of a particular nature), or that Local Authority procurement schemes would make it easier for customers to do so. Rather, their suggested purpose is to secure that prices for a certain service are reduced to a rate below 'typical local prices'.

41. Accordingly, the contemplated Order would not even fall within the language of the enabling statutory provisions. It would be wrong in principle to give a strained, expansive construction to those provisions, bearing in mind that once an Order is made, the persons to whom it relates are obliged to comply with it or to risk unlimited civil liability to third parties, as well as being compelled by injunction to comply.
42. Even if the proposed Order could be brought within the literal language of Schedule 8, it does not follow that it could lawfully be used to impose obligations upon a party (such as a Local Authority) which is neither a supplier of, nor a customer for the services in question,²⁹ nor (so far as funeral services are concerned) a person whose current activities are a cause of the adverse effects upon competition which are said to exist. Statutory powers must always be exercised, and exercised only, for the purpose for which they are conferred; and limitations upon statutory powers may be implied as well as express. Any suggestion that sections 138 and 161 of the Enterprise Act 2002 confer upon the CMA entirely open-ended powers, in the sense of being exercisable against anyone at all, regardless of their role or responsibility in relation to the market or the problem in question, cannot possibly be correct. We note that the revised CC3 guidelines on market investigations effectively acknowledge this by analysing appropriate remedies as either divestiture/intellectual property (irrelevant here), or behavioural, and by defining behavioural remedies as ones which '*seek to change aspects of business conduct from what may be expected based on businesses' incentives and resources.*'³⁰ In this context, it is not Local Authorities incentives or resources which are relevant to the operation of the market the CMA is considering and indeed, to the extent they are relevant, the proposed Order reinforces potential distortions caused by Local Authorities' incentives in crematoria markets.
43. Finally, the CMA's own guidance suggests it has understood that it does not have the powers it claims, to impose an order on a public body, such as a Local Authority:

'The CC can decide to make recommendations to others, either on their own or in combination with other measures as part of a solution to an AEC. The most common instances where the CC is likely to use recommendations are where it does not have jurisdiction to implement undertakings or orders directly, for instance where the area concerned is governed by a regulator or government department.'³¹ (emphasis added)

The CMA's Proposed Order interferes with the powers and duties of Local Authorities

44. The proposed Order would entail the use of an Order, made by the CMA itself, to co-opt the discretionary powers, conferred by statute upon Local Authorities, to be employed at the CMA's own direction and to serve its own purposes. That is evidently inconsistent with the intentions

²⁹ We appreciate that some Local Authorities are purchasers of funeral director services in their own right, in relation to public funerals but those are not the services to which this proposal relates: the services in question here are those to be supplied to and paid for by private individuals.

³⁰ See paragraph 40, Annex B of CC 3 (revised) Guidelines for Market investigations: their role, procedures, assessment and remedies,
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284390/cc3_revised.pdf

³¹ see, paragraph 94, Annex 3, CC3 (revised) Guidelines for Market investigations: their role, procedures, assessment and remedies
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284390/cc3_revised.pdf

of Parliament. Local authorities have no *duty* to enter into such arrangements with funeral directors. To the extent that there may be statutory provisions which would give them a discretionary *power* to do so, then that is a discretion which Parliament has conferred upon the authorities themselves, and which may not be usurped by the CMA. Nor may the CMA use a mandatory Order to turn what Parliament has chosen to create (namely, a discretionary power) into something else (a duty). As the courts have previously accepted, the distinction between power and duty is a highly important one, and not to be collapsed: see e.g. *R (Manchester CC) v St Helens MBC* [2010] PTSR 1157.

45. As it is put in Fordham, *Judicial Review Handbook* (6th edition, paragraph 50.2), with the support of the ample authority cited there:

'A public body must not surrender its independent judgment to a third party. Nor must one public body bring about the surrender of another public body's independent judgment.' (emphasis added)

46. The above analysis assumes that all the Local Authorities to which such an Order might be directed would in principle have power to conclude such arrangements. Even that may be a questionable assumption, however; and if a Local Authority has no such power, then a CMA Order cannot confer it.

47. For English Local Authorities, it may be that power to make such arrangements is in principle conferred by the general power of competence in the Localism Act 2011. Even then, however, there might be questions as to whether the Local Authority would be prevented from making such arrangements, other than through a company, if their terms were such as to benefit the authority itself (e.g. by requiring use of its own crematoria) and thus to serve a commercial purpose. In Wales, there is no general power of competence at present. Legislation to introduce such a power is currently before the Assembly, but contains similar 'commercial purpose' provisions to the English power. Scottish Local Authorities have a narrower 'well-being' power under the Local Government in Scotland Act 2003: amongst other constraints, this may not be used in a manner which would unreasonably duplicate other statutory functions, or which would amount to raising money (e.g. through encouraging or mandating the use of Local Authority crematoria). A general power of competence, in somewhat different terms, applies in Northern Ireland. At the least, therefore, it is questionable whether an available power exists in all cases, and there is the risk of a confused picture, with differing outcomes in different parts of the United Kingdom (and according to the local position with regard to matters such as crematorium ownership and charging).

48. In any event, we reiterate that all the relevant powers are discretionary ones, and that it would not be lawful for a CMA Order to usurp a Local Authority's discretion.

The CMA cannot dictate expenditure by a Local Authority

49. The legal points discussed above in paragraphs 38-48 are reinforced by consideration of the costs that such an Order might impose upon Local Authorities, thereby either increasing the burden on local taxpayers, impacting upon other local services, or both. The assessment of likely costs at paragraph 35 of the Paper may well underestimate the burden this would present for some Local Authorities, particularly if (as we think is likely to be necessary) measures to encourage take-up of such schemes would be required in order for them to be effective. The additional costs may include those of conducting regulated procurements, an issue to which we refer in more detail below at paragraphs 51-56.

50. Central government is committed by the so-called 'New Burdens Doctrine' to ensuring that the net additional cost of all new burdens placed upon Local Authorities by central government is assessed, and fully and properly funded. This further demonstrates why it cannot be right, or lawful, for what is in effect an additional obligation to act as a regulator or local market influencer to be imposed by way of a CMA Order. It should be for Local Authorities themselves to decide whether making procurement arrangements is a measure which is justified, and whose cost they wish to bear, in the light of their local circumstances.

Public Procurement Considerations

51. As we have already noted, one of the difficulties with the Paper is that it proposes the extension of Local Authority residents' schemes when those schemes remain only nascent. The existing Local Authority contracts are varied in nature (and may in some cases not be fully precise about the parties' respective obligations). However, a contract under which a funeral director undertook enforceable obligations to provide specified services at a specified price to members of the public, and at their expense, would very probably amount to a concession contract for the purposes of the procurement legislation (whether or not the authority itself also received funeral director services pursuant to that contract).
52. Such a contract would therefore be one to which the Concession Contracts Regulations 2016 applied, provided that its value exceeded the statutory threshold (currently approximately £4.7 million), on the basis of estimated turnover over the whole potential duration of the contract. It is quite likely that contracts awarded by larger Local Authorities (or by consortia of Local Authorities) would exceed the threshold, although contracts awarded by single, smaller Local Authorities might not do so. Where the value of a contract fell below the threshold, it might still need to be advertised if it was of potential interest to undertakings located in EU member states (although the extent to which this remains the position in the future will depend upon the final terms and timetable of the United Kingdom's exit from the European Union). So there is the potential for contracts in different areas to be awarded under a number of different legal regimes, depending upon the circumstances. This inconsistency may prove problematic, and risks creating boundary issues and distorting competition if differently run tender processes (some more transparent and rigorously run than others) produce different outcomes.
53. In cases in which the procurement was fully regulated under the Concession Contracts Regulations, the Local Authority would, assuming that the tender process was to follow an open or restricted (rather than a negotiated or dialogue-based) type of procedure,³² have to lay down in advance a specification for the service to be provided. It would also have to inform potential bidders, in advance of the submission of tenders, what evaluation criteria were to be applied. Most significantly, this would involve determining the relative weight to be attached to the price of the service, and to whatever quality-related criteria were to be adopted.³³ In principle, an Authority may strike that balance however it wishes (so that it could, for example, award the contract to the lowest price offered which complies with the specification; or it could award only 10% or 20% of the available marks for price, and the remainder for quality).

³² The Concession Contracts Regulations, unlike the Public Contracts Regulations 2015, do not prescribe specific types of procedure to be followed. But the fundamental choices about the nature of the procedure remain similar.

³³ Even in the case of a highly prescriptive output-based specification with no potential for tenderers to offer enhancements to that specification as part of their bids, some quality-related criteria will be necessary (e.g. in relation to mandatory licensing of funeral directors and premises that may come about as a result of CMA recommendations and other quality criteria, including for front of house and services included).

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54. Thinking about how this might work in practice serves to point up the extreme difficulty and unsuitability of trying to impose upon a public body a procurement exercise for a contract which it has not itself chosen to conclude (but into which it would have been forced by the CMA Order).
55. We believe that it would be wrong for the CMA to prescribe in detail both the specification to be tendered, and the evaluation criteria to be applied, particularly for a standard funeral intended to be broad in scope, for most customers. Even if the CMA had the relevant knowledge to carry out this task, and (presumably) to update it on an ongoing basis, such an approach would fail to respect local traditions and customers' desire to personalise services. It would further emphasise the illegitimate usurpation of Local Authority discretion. Indeed, it is at least arguable that in such circumstances the CMA would itself be undertaking the obligations of a contracting authority for the purposes of the Concession Contracts Regulations.
56. We do not believe it would be practical (even if it were lawful) for the CMA to dictate the nature of such a procurement exercise from the centre. If there is any way in which widespread tendering for residents' funerals could work successfully, that would have to involve careful thought and full commitment by Local Authorities themselves. If that is right, then the logic is that the CMA, should it be minded to proceed down this road at all, should act by way of recommendation and not that of an Order.

The design of any potential remedy raises very significant challenges

57. We believe that families should be able to say goodbye to their loved one in the way they would want to do so. We do not believe that it is right for a funeral service to be standardised and have submitted evidence to show that funerals are becoming more personalised and more diverse to meet customer needs and wishes, at least in part as a result of demographic, ethnic and religious/secular changes in the UK. This remedy, even if framed narrowly, would lead to undue standardisation of the personal choices families will want to make. We do not believe it is for the CMA, or others, to dictate to consumers or curtail their choices. Funerals are not a commodity service.
58. There is therefore a much greater risk of unintended consequences arising from the remedy which would ultimately prove to be disproportionate to any AEC; a recommendation, or greater transparency as to the availability of Local Authority schemes can support the CMA's other remedies more proportionately.
59. The CMA has identified a range of factors at paragraph 26 of the Paper that would require careful consideration in the design of any remedy, as well as a series of further considerations at paragraph 32 of the Paper which would need to be assessed.
60. Our view is that the breadth of open questions and issues to be considered captures the challenges in putting in place a remedy of this kind that works well, is proportionate and forms a coherent part of a package of remedies that, in the round, address any AECs that the CMA has identified. We do not believe this is an appropriate remedy.
61. A Local Authority tendering remedy would be novel and if poorly designed, has the potential to cause very significant market distortions that serve customers poorly, including the potential to:
- a) drive exit of existing funeral directors, weakening choice and potentially competition in the market for future tenders;

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- b) distort competition between crematoria and remove choice from customers, who may be discouraged from using their preferred crematoria;
- c) create unanticipated consequences for pre-need markets if tendered prices for funeral schemes appear to be materially lower than for those of funeral plans already sold, [X];
- d) drive down quality, as tendering processes focus excessively on price and result in poor participation and/or poorly specified tenders that do not meet customer needs;
- e) increase the incentive for funeral directors to ‘upsell’ unnecessary services on top of the standard Local Authority funeral; and
- f) direct customers towards funerals that do not in fact meet their social and emotional as well as cultural or religious needs.

62. We believe there might already be impacts on competition from the longer established Local Authority schemes already in existence. For example, based on the available information we have to date we analysed the competitive landscape in the Nottingham area where 5 Co-op homes provide residential funerals for the Nottingham City Council looking at a comparison of the number of active funeral homes in the local authority area that offers residential funerals as compared with areas where no such funeral is available. The analysis indicates that there are almost half as many non-Co-op competitor funeral homes in the Nottingham area where resident funeral contracts are in place when compared with benchmark areas with similar mortality and surface area. We compared the number of competitor funeral homes per 1,000 deaths in the local authority area where the 5 Co-op homes are located with the corresponding average from 13 other local authority areas with similar mortality and surface area. We considered a local authority area to be similar if it had between 2,000 and 2,600 deaths in 2018 (the reference area where the 5 Co-op homes are located had 2,312 deaths) and a surface area up between 37 and 112 square kilometres (the reference area where the 5 Co-op homes are located had a surface area of 75 square kilometres). While the use of local authority areas is inadequate for local market analysis (see our response to the CMA's Working Paper on Funeral directors price dispersion analysis), this analysis does indicate that the Local Authority scheme in Nottingham may have reduced the number of competitors.

	Number of areas included	Number of non-Co-op active funeral homes at the beginning of 2019	Number of all active funeral homes at the beginning of 2019	Number of deaths in 2018	Non-Co-op active funeral homes per 1,000 deaths	All active funeral homes per 1,000 deaths
Local authority area where the 5 Co-op homes are located	1	8	13	2,312	3.5	5.6
Similar local authority areas	13	217	271	29,866	7.3	9.1
All other local authority areas in England and Wales	319	3,808	4,654	492,228	7.7	9.5

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Note: the analysis above does not include 14 local authority areas for which there was no information available on the surface size. The analysis is based on Co-op competitor database last updated at the beginning of 2019 and it does not include entries and exists in the market during 2019.

63. This analysis clearly that confirms the CMA's tentative concern is in fact likely to result in widespread market exit if Local Authority schemes are taken up to a great extent.
64. We believe that a Local Authority tendering remedy is at the more interventionist end of the spectrum and is unwarranted and disproportionate. The CMA has already proposed a substantial package of remedies to improve price transparency, sales practices and regulate quality. We believe these would be effective in addressing any AEC and, even if the CMA disagree with us in this area, the opportunity for a less interventionist approach should first be tested before more radical or risky remedies are attempted.

**Schedule
Responses to CMA consultation questions**

Invitation to comment – overall package of remedies

In paragraph 49 of the Paper, the CMA has invited comment on the following general questions:

LA tendering as a remedy option

(a) To what extent do respondents think that wider introduction of tendered LA low-cost funeral schemes, intended as a response to problems identified on the demand side of the market would be: (a) effective; (b) proportionate. Please answer with respect to each of the implementation options available, that is:

(i) a CMA Order applicable to all LAs;

Please see paragraph 9 above: we do not believe that this remedy would be proportionate to any AEC identified by the CMA and the risk of unintended consequences (set out in our answer to (c) below) is such that we do not believe it would be effective.

(ii) a CMA recommendation to LAs;

Please see paragraph 9 above: this would be a much less intrusive remedy and therefore more proportionate and effective to address any AEC identified by the CMA. As discussed above, the CMA must also carefully consider how a CMA Order would interact with other statutory obligations of Local Authorities.

(iii) a CMA recommendation to central government(s) that it/they should create a statutory responsibility on LAs.

Please see paragraph 9 above: this could only be a consequence of limits of the CMA or Local Authorities to act given the current scope of Local Authority statutory duties and powers. However, we do not believe this would be effective or proportionate.

(b) How should the specification of the funeral product to be provided under a LA scheme be determined?

(i) Should the focus be on delivering a competitive negotiated price for a 'standard' funeral package, or addressing funeral poverty through ensuring availability of a low-cost respectful funeral option?

The evidence does not support the need for such a remedy. However, if it were to be pursued, which we disagree with, it should only be on the basis of a clear objective, consistent with Local Authority interest in alleviating funeral poverty. As such, any specification for funerals needs to meet minimum standards for a low-cost respectful funeral.

(ii) How much scope, if any, should there be for variations between LAs?

Please see paragraph 21 above: if the approach of specifying a low cost respectful funeral which operates as a safeguard, there will be limited, if any, need to provide for variations between LAs. There is significant variation in local

preferences and practices which militates against attempting to develop a 'one size fits all' standard Local Authority funeral that most customers are pointed to, in a high touch market where the need for a personal and bespoke service is what customers want.

- (c) What might be potential unintended consequences of wider LA tendering for low cost residents' funerals?

As stated above, it is difficult to answer questions on specific elements proposed without being able to consider an overall package of remedies; however we have identified a number of potential consequences above.

- (d) What are the current barriers to LAs establishing tendered low cost funeral schemes (e.g. available resources, other priorities, not regarded as a LA responsibility, etc)? How might they be overcome?

Local Authorities are financially constrained and are only likely to invest in the promotion of these schemes where there is a benefit (for example commercial) or risk to them (because there is a risk of sanction or enforcement action). Those schemes that have had wide recognition and uptake have been successful because Local Authority crematoria services benefit either through the ability to secure funerals that would otherwise take place at a private crematorium or by deflecting criticism or pressure on crematoria pricing. As the CMA has identified, no existing funeral schemes offer discounts on crematoria pricing.

- (e) What are the barriers to funeral director participation in LA tenders for resident schemes? How might they be overcome?

Co-op currently participates in funeral tenders. However, it does so selectively, where there is scope to increase volumes in areas with homes that might not otherwise be operating at capacity. At current levels, the pricing achieved in Local Authority tenders are not sustainable if applied across our business.

- (f) What are the barriers to take-up of LA resident schemes by bereaved families? How might they be overcome? What types of bereaved people/families would be most likely to use such schemes?

The need to build customer awareness means that uptake is often low in the early stages. This is generally overcome over time.

More importantly, Local Authority schemes are a 'one size fits all' option and will not meet the needs of all customers, which may also quite rightly, limit the extent of their uptake.

- (g) What impact have existing LA schemes had on wider pricing for funerals in their respective local areas?

We do not have the information to comment on the impact of existing LA schemes on wider pricing for funerals in their respective local areas. As indicated at paragraphs 62-63 above, there is evidence that existing Local Authority schemes may have a significant impact on the local competitive landscape.

- (h) What should be the CMA's priorities for further analysis or evidence gathering on existing schemes?

We do not believe there is any merit in considering this remedy further. If it is to pursue this avenue, the CMA needs to consider a number of factors in looking at existing schemes, by reference to internal documents, including:

- **the reasons Local Authorities that have them in place choose to undertake them and the role that they have in driving income for crematoria services;**
- **the robustness of existing tender processes and in particular evaluation of quality;**
- **approaches to tender design and publicity for Local Authority schemes, including whether tender design has created lock-in effects or encouraged bidding at unsustainable rates;**
- **quality in terms of product service and design (to include funeral director and crematoria facilities, length of service) and**
- **longer term impact of existing schemes on the local competitive landscape for funeral directors and crematoria.**

LA tendering as basis for price benchmarks

- (i) Do respondents think that the outcomes of current and future LA tendering exercises for provision of resident funeral schemes could provide useful data points for benchmarks to feed into price controls?

No. The CMA indicates that the level could be set by reference to the prices of products and services that are comparable to the ‘benchmark’ package, but does not make mention of the associated quality of customer care, the level of care for the deceased, the standard of the vehicle, the standard of customer-facing facilities, nor does the CMA specify the type of hearse, coffin or limousine.

Underlying quality and associated costs vary significantly across the range of funeral directors. As a result, it may be those funeral directors with high quality services that will exit the market due to a price control that is below their cost levels. By setting a price cap based on average prices of these products and services, we believe there would be hollowing out of quality in order to reduce costs. This concern is even more pronounced where the CMA sets the benchmark price equal to the lowest 25 percentile, meaning many funeral directors would have to price below cost.

In any case, in our experience of providing funerals for countless customers across the country, there is no ‘one-size-fits-all’ when it comes to a funeral – each funeral is specific to each person. Funerals are not a commodity service. Setting a price control using ‘comparable products’ would mean that many customers would be provided with a service that they do not want and is at odds with any attempt to introduce more consumer choice.

Please see our response to the Price Remedies Working Paper.

Other comments

- (j) Please provide any other relevant comments or observations on these proposals.

See above.